

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MICHAEL W. ESTES,

2:12-CV-1853 JCM (VCF)

Plaintiff(s),

V.

ROBERT GASTON, et al.,

Defendant(s).

ORDER

Presently is the report and recommendation of Magistrate Judge Ferenbach regarding plaintiff's motion for leave to proceed in forma pauperis, motion for appointment of counsel, and screening plaintiff's complaint. (Doc. # 9). No objections have been filed and the deadline has expired.

This court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a de novo determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1).

Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation where no objections have been filed. *See United States v.*

1 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the
2 district court when reviewing a report and recommendation to which no objections were made); *see*
3 *also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s
4 decision in *Reyna-Tapia* as adopting the view that district courts are not required to review “any
5 issue that is not the subject of an objection.”). Thus, if there is no objection to a magistrate judge’s
6 recommendation, then this court may accept the recommendation without review. *See, e.g.,*
7 *Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without review, a magistrate judge’s recommendation
8 to which no objection was filed).

9 Nevertheless, this court finds it appropriate to engage in a de novo review to determine
10 whether to adopt the recommendation of the magistrate judge. Upon reviewing the recommendation
11 and the underlying briefs, this court finds good cause appears to ADOPT the magistrate's findings
12 in full.

13 | Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the report and recommendation of Magistrate Judge Ferenbach (doc. # 9) be, and the same hereby is, ADOPTED in its entirety.

IT IS FURTHER ORDERED that the clerk of the court shall file plaintiff's complaint (doc. # 1-1).

IT IS FURTHER ORDERED that the complaint (doc. # 1-1) be, and the same hereby is,
DISMISSED without prejudice.

IT IS FURTHER ORDERED that plaintiff, if he chooses to do so, be permitted to file an amended complaint within thirty-three (33) days from the date of the clerk mails the plaintiff the court's order dismissing the complaint, or the case may be dismissed with prejudice.

24 DATED December 19, 2012.

Xem C. Mahan
UNITED STATES DISTRICT JUDGE